



UNITED STATES DEPARTMENT OF COMMERCE

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Washington, D.C. 20231

Filed by: Judge Fred McKelvey

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Facsimile: (703) 305-0942

MAILED

MAR 06 2002

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Applicants: CAMPBELL

Application No.: 09/650,194

Filed: 08/29/00

For: UNACTIVATED OOCYTES AS CYTOPLAST
RECIPIENTS FOR NUCLEAR TRANSFER

The above-identified application or patent has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with another application or patent. An interference has been declared. The interference is designated as No. 104,809.

Notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference." 35 U.S.C. § 135(c).

msk

FRED E. McKELVEY

Administrative Patent Judge

The opinion in support of the decision being entered today is not binding precedent of the Board.

Paper 1

Filed by: Fred E. McKelvey
Senior Administrative Patent Judge
Box Interference
Washington, D.C. 20231
Tel: 703-308-9797
Fax: 703-305-0942

Filed
06 March 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

NIKOLAI S. STRELCHENKO, JEFFREY M. BETTHAUSER,
GAIL L. JURGELLA, MARVIN M. PACE and MICHAEL D. BISHOP

Junior Party,
(Application 09/357,445),

v.

KEITH HENRY STOCKMAN CAMPBELL and IAN WILMOT

Senior Party
(Application 09/650,194).

Patent Interference 104,809 (McK)

NOTICE DECLARING INTERFERENCE
(37 CFR § 1.611)

Part A. Declaration of interference

An interference is declared (35 U.S.C. § 135(a)) between the above-identified parties.

Details of the applications, counts and claims designated as corresponding or as not corresponding to the counts appear in Parts E and F of this NOTICE DECLARING INTERFERENCE.

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BOARD OF PATENT APPEALS
AND INTERFERENCES

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BOARD OF PATENT APPEALS
AND INTERFERENCES

Part B. Judge designated to handle the interference

Senior Administrative Patent Judge Fred E. McKelvey has been designated to handle the interference. 37 CFR § 1.610(a).

Part C. Standing order

A Trial Section STANDING ORDER accompanies this NOTICE DECLARING INTERFERENCE. The STANDING ORDER applies to this interference.

Part D. Conference call to set dates

A telephone conference call to set dates for taking action in the interference is scheduled for 2:30 p.m. on 01 May 2002 (the call will be initiated from the PTO).

No later than 26 April 2002, each party shall file and serve by facsimile a list of the preliminary motions the party intends to file. See § 17 of the STANDING ORDER.

A copy of a "sample" order setting times for taking action during the preliminary motion phase of the interference accompanies this NOTICE DECLARING INTERFERENCE.

Counsel are encouraged to discuss the order prior to the conference call with the view to coming to some mutual agreement as to dates for taking action. A typical preliminary motion period lasts approximately nine (9) months. Counsel should be prepared to justify any request for a shorter or longer period.

Part E. The parties involved in this interference are:

Junior Party

Named inventors: Nikolai S. Strelchenko, WI
Jeffrey M. Betthauser, WI
Gail L. Jurgella, WI
Marvin M. Pace, WI
Michael D. Bishop, WI

Application: Application 09/357,445,
filed 20 July 1999

Title: Method of cloning animals

Assignee: Infigen, Inc.

Accorded Benefit: Application 09/239,922,
filed 28 January 1999,
now U.S. Patent 6,011,197,
granted 4 January 2000

Application 08/812,851,
filed 6 March 1997

Attorneys: See last page

Address: See last page

Senior Party

Named Inventors: Keith Henry Stockman Campbell, UK
Ian Wilmut, UK

Application: Application 09/650,194,
filed 29 August 2000

Title: Unactivated oocytes as cytoplasmic
recipients for nuclear transfer

Assignee: Roslin Institute (Edinburgh), The
Minister of Agriculture, Fisheries &
Food and Biotechnology & Biological
Sciences Research Council

Accorded Benefit:¹ Application 08/803,165,
filed 19 February 1997,
now U.S. Patent 6,252,133,
granted 26 June 2001

PCT application PCT/GB96/02098,
filed 30 August 1996

Attorneys: See last page

Address: See last page

¹ Campbell also claims the benefit under 35 U.S.C. § 119 of UK patent application 95-17779, filed 31 August 1995. Since there are differences between the disclosure of (1) the UK patent application and (2) the involved Campbell application, Campbell parent application 08/803,165 and the PCT application, benefit for the purpose of priority is not accorded at this time. During the preliminary motion period, Campbell may move for benefit for the purpose of priority. 37 CFR § 1.633(f).

Part F. Count and claims of the parties

Count 1

A method according to either of claims 57 or 106 of Strelchenko application 09/357,445, wherein the ungulate animal is a bovine,

or

a method according to any of claims 19 or 23 of Campbell application 08/803,165.

The claims of the parties are:

Strelchenko: 57-58, 61-63, 69-88, 106, 112-115 and 118

Campbell: 19-50

The claims of the parties which correspond to Count 1, and therefore are involved in the interference (35 U.S.C. § 135(a), are:

Strelchenko: 57-58, 61-63, 69-88, 106, 112-115 and 118

Campbell: 19-26 and 35-50

The claims of the parties which do not correspond to Count 1, and therefore are not involved in the interference with respect to Count 1, are:

Strelchenko: None

Campbell: 27-34 (related to sheep)

Count 2

A method according to either of claims 57 or 106 of Strelchenko application 09/357,445, wherein the ungulate animal is an ovine,

or

a method according to any of claims 27 or 31 of Campbell application 08/803,165.

The claims of the parties are:

Strelchenko: 57-58, 61-63, 69-88, 106, 112-115 and 118

Campbell: 19-50

The claims of the parties which correspond to Count 2, and therefore are involved in the interference (35 U.S.C. § 135(a)), are:

Strelchenko: 57-58, 61-63, 69-88, 106, 112-115 and 118

Campbell: 27-50

The claims of the parties which do not correspond to Count 2, and therefore are not involved in the interference with respect to Count 2, are:

Strelchenko: None

Campbell: 19-26 (related to bovines)

Count 3

A method according to either of claims 57 or 106 of Strelchenko application 09/357,445, wherein the ungulate animal is a porcine,

or

a method according to any of claims 35 or 39 or 43 or 47 of Campbell application 08/803,165, where the "non-human mammal" is a pig or a porcine and where the "non-human mammalian fetus" is a pig fetus or a porcine fetus.

The claims of the parties are:

Strelchenko: 57-58, 61-63, 69-88, 106, 112-115 and 118

Campbell: 19-50

The claims of the parties which correspond to Count 3, and therefore are involved in the interference (35 U.S.C. § 135(a), are:

Strelchenko: 57-58, 61-63, 69-88, 106, 112-115 and 118

Campbell: 35-50

The claims of the parties which do not correspond to Count 3, and therefore are not involved in the interference with respect to Count 3, are:

Strelchenko: None

Campbell: 19-34 (related to ovines or bovines)

Part G. Heading to be used on papers

The following heading shall be used on papers filed in the interference. See § 18 of the STANDING ORDER.

Paper ____²

Filed on behalf of [name of party]
By: Name of lead counsel, Esq.
Name of backup counsel, Esq.
Street address
City, State, and Zip-Code
Tel:
Fax:

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

NIKOLAI S. STRELCHENKO, JEFFREY M. BETTHAUSER,
GAIL L. JURGELLA, MARVIN M. PACE and MICHAEL D. BISHOP,

Junior Party,
(Application 09/357,445),

v.

KEITH HENRY STOCKMAN CAMPBELL and IAN WILMUT,

Senior Party
(Application 09/650,194).

Patent Interference 104,809 (McK)

TITLE OF PAPER

² Leave a blank line because the board assigns the paper number.

Part H. Summary of dates for taking action

Times for taking action are set out in the following sections of the STANDING ORDER:

1. **§ 7:** date for identifying lead and backup counsel.
2. **§ 8:** date for identifying any real party in interest.
3. **§ 9:** date for requesting copies of involved and benefit applications and patents.
4. **§ 17:** date for filing list of proposed preliminary motions.
5. **§ 19:** date for accomplishing certain discovery.
6. **§ 20:** date for filing clean copy of claims.
7. **§ 21:** date for filing clean copy of claims in cases with drawings and/or claims containing a means plus function limitation.
8. **§ 23:** dates for filing oppositions to Rule 635 " miscellaneous motions and dates for filing replies to oppositions.
9. **§ 33:** date for objecting to admissibility of evidence.
10. **§ 34:** date for serving supplemental affidavits or evidence to respond to objection to admissibility of evidence.
11. **§ 35:** dates when cross-examination can take place.
12. **§ 45:** dates for taking action with respect to settlement discussions

Part I. Order form for requesting file copies

FILE COPY REQUEST

Interference 104,809 (McK)

A copy of Part E of this NOTICE DECLARING INTERFERENCE should be attached to this FILE COPY REQUEST, with a circle by hand around the patents and applications for which a copy of a file wrapper is desired.

To facilitate processing of this FILE COPY REQUEST, the following information should be included:

1. Charge fees to USPTO Deposit Account No. _____
2. Complete address, including street, city, state, zip code and telephone number (do not list a Post Office box inasmuch as file copies are sent via commercial overnight courier).

Telephone, including area code: _____

Part J. Signature of administrative patent judge

McK

Fred E. McKelvey
Senior Administrative Patent Judge

06 March 2002
Arlington, VA

Enc:

Copy of STANDING ORDER

Copy of order used for setting times for taking action in
the preliminary motion phase of the interference (ORDERPM6)

Copy of order used for setting times for taking action in
the testimony and briefing phases of the interference
(ORDERTE6)

There is no PTO Form 850

Copy U.S. Patents 6,011,197
6,252,133

Copy of Strelchenko claims

Copy of Campbell claims

DECLARE.007
Revised September, 2000
(replaces DECLARE.006.1)

104,809

cc (via Federal Express):

Attorney for Strelchenko
(real party in interest
Infigen, Inc.):

Michael A. Whittaker, Esq.
FOLEY & LARDNER
402 West Broadway
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San Diego, CA 92101-3542

Tel: None
Fax: None
E-mail: None

Attorney for Campbell
(real party in interest:

(1) Assignees: Department for Environment, Food & Rural Affairs
of London, England and Roslin Institute (Edinburgh) of
Midlothian, England; (2) licensees: Geron Corporation, of Menlo
Park, CA and PPL Therapeutics Ltd of Midlothian, England):

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INTERFERENCE DIGEST

Interference No. 104,746

Paper No. 12

Name: Keith Henry Stockman Campbell, et al.

Serial No.: 09/650,194

Patent No.

Title: Unactivated oocytes as cytoplasm recipients for nuclear transfer

Filed: 08/29/00

Interference with Steven L. Stice, et al.

DECISION ON MOTIONS

Administrative Patent Judge, _____ Dated, _____

FINAL DECISION

Board of Patent Appeals and Interferences, Favorable Dated, 12/20/04

Court, _____ Dated, _____

REMARKS

This should be placed in each application or patent involved in interference in addition to the interference letters.